IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CARTER-JONES LUMBAR COMPANY	:	
Plaintiff-Appellee and Cross Appellant	:	Case Number 99-4241
v.	:	
LTV Steel Company, et al.	:	
Defendants,	:	
Dixie Distributing Company; Harry C. Denune,	:	
Defendants-Appellants	:	

MOTION OF APPELLANTS, HARRY C. DENUNE AND DIXIE DISTRIBUTING COMPANY, FOR AN ORDER TO CERTIFY A QUESTION OF STATE LAW

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, appellants, Harry C. Denune and Dixie Distributing Company ("Appellants"), hereby respectfully request this court to issue a certificate order to the Supreme Court of Ohio to answer a question of Ohio law. The reasons for this motion are more fully set forth in the accompanying memorandum.

/s/ Terence L. Gallagher/KAK
Terence L. Gallagher (0020709)

/s/ Keith A. Kavinsky
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ATTORNEYS FOR
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HARRY C. DENUNE AND
DIXIE DISTRIBUTING
COMPANY

MEMORANDUM IN SUPPORT OF MOTION

Rule XVIII of the Rules of Practice of the Supreme Court of Ohio provides as follows:

> The Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, determines there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court, and issues a certification order.[1]

The proceeding at bar relates to the issue of whether it is appropriate to pierce the corporate veil of a corporation and hold a shareholder liable for a corporate debt under Ohio common law. The seminal case on this issue from the Ohio Supreme Court is *Belvedere Condominium*

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[1] A copy of Ohio SCt R XVIII is attached hereto as Exhibit A.

Unit Owners Association v. R.E. Roark, 67 Ohio St.3d 274 (1993). In *Belvedere*, the Ohio Supreme Court announced a three pronged test to determine whether a creditor is entitled to pierce the corporate veil. The first prong of that test is whether "control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own." *Belvedere* at 289. However, since the issuing of the *Belvedere* decision, there is a question as to whether the corporate veil may be pierced based upon the shareholder's control over a single transaction or whether a court, in determining whether to pierce the corporate veil, is required to utilize a broad based analysis to consider whether the first prong of the test set forth in *Belvedere* has been met.

The instant appeal involves the foregoing question. In their brief, Appellants have argued that control over a single transaction is not sufficient to pierce the corporate veil since a broad based analysis of the relationship between the corporation and a shareholder is required. In its brief, Appellee argued that under the *Belvedere* test, piercing the corporate veil can be based upon a single transaction.

In light of the foregoing, Appellants believe that there is a lack of controlling precedent from the Ohio Supreme Court on this issue and this is a question of Ohio law that requires consideration by the Supreme Court of Ohio.

The decision of whether or not to utilize the certification procedure is discretionary. This procedure has been

used previously by this court when it is deemed appropriate. *Planned Parenthood Assoc. v. McWherter,* 923 F. 2d 2474 (6th Cir. 1991). Appellants respectfully submit that the fact pattern presented in the case at bar presents an appropriate model for the Ohio Supreme Court to consider with respect to the analysis of the first prong of *Belvedere* and the policy implications for recognizing whether or not it would be appropriate under Ohio law for a creditor to pierce the corporate veil based upon control of a single transaction. Counsel for Appellants will prepare a proposed certification order upon instructions from this court.

FOR THE FOREGOING REASONS, appellants' motion to certify is well taken and should be sustained.

/s/ Terence L. Gallagher/kak
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CERTIFICATE OF SERVICE

The undersigned, Attorney for Defendants-Appellants, Harry C. Denune et. al., hereby certifies that a true and accurate copy of the foregoing Motion was served upon John A. Daily, Attorney for Plaintiff-Appellee, Daily & Schnars, 3570 Executive Drive, Suite 202, Uniontown, Ohio 44685-0867, by ordinary U.S. Mail, postage prepaid, this 17th day of March, 2000.

/s/ Keith A. Kavinsky
Keith A. Kavinsky (0059796)